

Remarks

The claims were amended in accordance with the amendments above. The amendments to the claims are being made merely to clarify the invention. All of the amendments are fully supported by the specification, claims, and figures as originally filed. No new matter is believed or intended to be involved.

Entry of Amendment after Final

Applicant submits that the present amendments to the claims do not raise new issues, and that the present amendments place the application in better condition for allowance, such that the amendments to the claims will require only cursory review. It is therefore appropriate to enter the present amendments despite the finality of the pending rejections.

In particular, and as indicated below, the present amendments simply address the §112 issues and withdrawn claim issues noted by the Office. Since the Office has already indicated that the application would be in condition for allowance if the formal matters raised in the present Office Action were addressed, all claims are in condition for allowance. The present amendment should therefore be entered in accordance with MPEP 714.12 and 37 CFR §1.116.

§112 Rejections

In the Office Action dated 01/13/2009, claims 1, 3, 4, 6-9, 11-24, 27-28, and 32-47 were rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. In particular, the Office stated that the limitation in claim 1 reciting a tether that “comprises a tube configured to replenish the core” lacked adequate support in the original disclosure. The Office noted that FIG. 16 and paragraph [0098] of Applicant’s disclosure discusses such a tube tether when a reservoir is present.

Claim 1 has been amended to clarify that the core defines a reservoir, and that the tube of the tether is configured to replenish the reservoir. The recitations of a reservoir and tether tube being configured to replenish the reservoir are clearly supported by at least FIG. 16 and paragraph [0098] of Applicant’s original disclosure. Furthermore, Applicant notes that the term

“core” would be understood by one of ordinary skill in the art to generically include the interior of various types of implants or other devices (e.g., those that have reservoirs and those that lack reservoirs), such that there is nothing inconsistent with the recitation in amended claim 1 of the core defining the reservoir. See also original claim 46, which includes explicit recitations of both of the terms “core” and “reservoir.” In other words, the recitation of a core defining a reservoir is clearly supported by Applicant’s original disclosure.

For at least the foregoing reasons, Applicant respectfully submits that amended claim 1 and Applicant’s original disclosure satisfy the written description requirement of §112. Applicant therefore respectfully requests that the rejection be withdrawn.

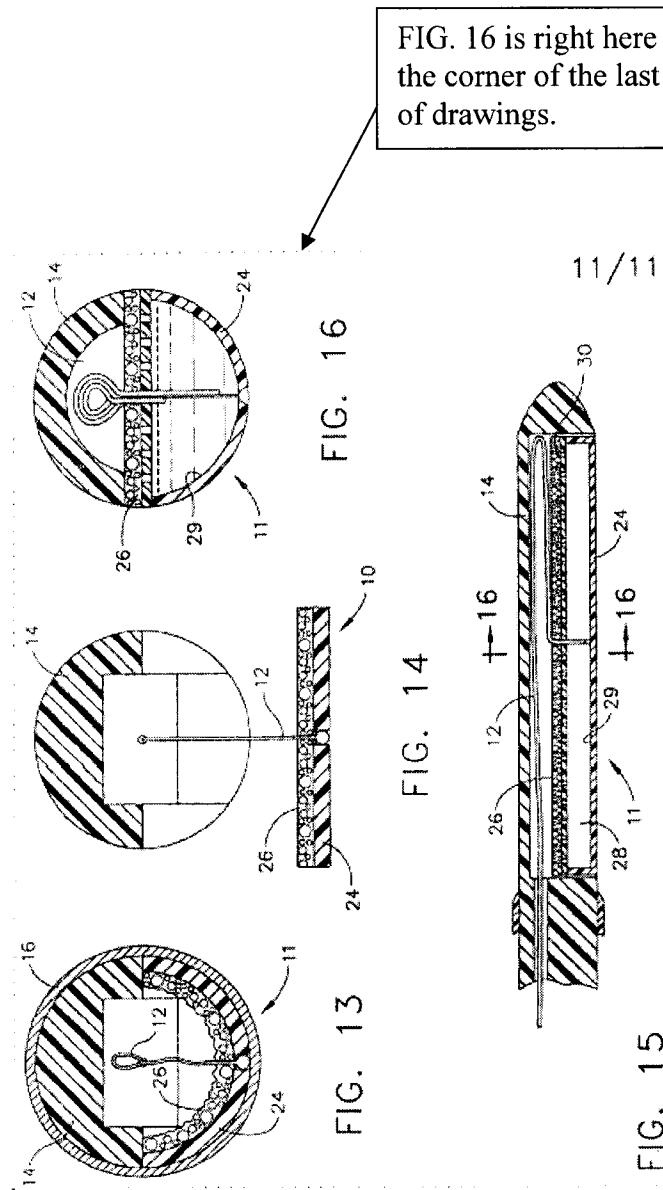
Non-Elected Claims

The Office noted that the application contains claims 10, 25, 26, 29, and 30, which were drawn to a non-elected invention. The Office further stated that a complete reply must include cancellation of non-elected claims or other appropriate action in accordance with 37 CFR §1.144 and MPEP 821.01.

Claims 10 and 25-26 have been canceled. Claims 29-30 are not being canceled because they are eligible for rejoinder. See MPEP 821.04. In particular, claims 29-30 have been amended to depend from claim 1, and therefore include all of the limitations of claim 1. Since amended claim 1 is now in condition for allowance, and to the extent that the Office sees no formal or substantive defects in claims 29-30, claims 29-30 should be rejoined and allowed in accordance with MPEP 821.04.

Status of Figure 16

The Office further stated that FIG. 16 was missing from the file, and that the drawings end at FIG. 15. The Office stated that a new copy of FIG. 16 should be presented. Applicant notes that FIG. 16 was in fact included with Applicant’s original filing of the present application. In particular, FIG. 16 appears in the corner on the last sheet of drawings (next to FIG. 14), as shown in the below copy of last sheet of drawings that were originally filed with the present application.



The above copy of the last sheet of drawings originally filed with the present application was downloaded directly from PAIR, such that it is indeed “of record” in the present application. It appears as though the arrangement of the drawings on the last sheet of drawings originally filed with the present application created an appearance that FIG. 15 was the last drawing. However, as shown in the above copy of the last sheet of drawings originally filed with the present application, FIG. 16 was indeed included in the drawings originally filed with the present

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application. Applicant therefore respectfully requests that the Office acknowledge that FIG. 16 was included with the drawings originally filed with the present application; and Applicant respectfully submits that FIG. 16 does not need to be re-submitted.

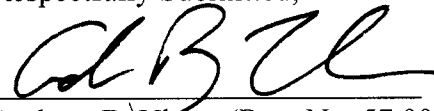
Conclusion

Applicant expressly reserves all rights and arguments with respect to distinctions not explicitly noted herein. In addition, to the extent that the amendments constitute a narrowing of the claims, such narrowing of the claims should not be construed as an admission as to the merits of the prior rejections. Indeed, Applicant traverses the rejections and preserves all rights and arguments. To the extent that any particular statement or argument by the Office in the pending Office Action has not been explicitly addressed herein, the same should not be construed as an acquiescence or admission by the Applicant that such statements or arguments by the Office are accurate or proper.

Based on the foregoing, all pending claims are in a condition for allowance. Accordingly, Applicant respectfully requests reconsideration and an early notice of allowance. Should the Examiner wish to discuss the amendments or arguments made herein, Applicant invites the Examiner to contact the undersigned at (513) 369-4811 or via e-mail at aulmer@fbtlaw.com.

The Commissioner for Patents is hereby authorized to charge any deficiency, including any fees required for an extension of time not already paid for or any other required fees not already paid for, or to credit any overpayment of fees, to Frost Brown Todd LLC Deposit Account No. 06-2226.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'A. B. Ulmer', written over a horizontal line.

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